REMARKS/ARGUMENTS

Applicant respectfully submits that the obviousness rejections are improper and should be withdrawn. A mere conjecture that one would combine the cited references because the disclosure of one reference "would improve" the disclosure of another cited reference does not constitute a proper motivation to combine as required by 35 U.S.C. § 103. Additionally, it is respectfully submitted that the proposed combination of references (Pereira and Maruyama) does not yield the subject matter that the Examiner suggests. In light of this, the Examiner's rejections are unsupported by the references and should be withdrawn. These points are discussed in detail below.

Proposed Combinations do not Yield Subject Matter of the Claims

Claims 1-33 are rejected as being unpatentable over Pereira in view of Maruyama. Applicant respectfully submits that the Examiner has mischaracterized the references. As a result, the Examiner has not made a proper showing that the combinations of references, in fact, yield the subject matter suggested by the Examiner.

Specifically, the Examiner asserts that Maruyama discloses "determining whether usage of the a [sic] one or more resources by the operating system entity exceeds a one of the limiting values in the one of the set resource controls corresponding to the one of the resources." However, in the portion of the reference cited by the Examiner, Maruyama merely discloses comparing a current load for the plurality of processors to reference load data, to prepare a future load prediction for each of the processors (col. 1, lines 51-56) and controlling distribution of a load for a specific processor when a predicted call process load for the processor exceeds a predetermined value (col. 2, lines 10-28). This does not support the Examiner's characterization of what Maruyama discloses.

In particular, the processor "current load," which Maruyama compares to reference load data, is not usage "by the operating system entity" as the Examiner contends. In any event, Maruyama does not distinguish at all among the processor load usage – i.e., whether it is usage by an "operating system entity" or by any other "entity" executed by the system. Rather, the usage is described as usage in general. Put simply, the Maruyama disclosure does not enable measuring usage by an operating system entity. This is fatal to the anticipation rejection, since in order for a reference to be anticipating, "the identical invention must be shown in as complete detail as is contained in the claim." See MPEP 2131.

Furthermore, the Examiner characterizes Maruyama as disclosing either "triggering one or more actions" or "granting the one or more resources to the operating system entity" if, respectively, the usage of the one of the one or more resources "exceeds the one of the limiting values" or "the limiting value has not been exceeded." The Examiner is not clear as to what in the cited portions of the Maruyama disclosure is considered to be the one or more "actions" that are conditionally triggered. To the extent the Examiner considers the "actions" to be controlling the processor load, such action is described in the cited portions of Maruyama as being triggered based on a predicted load exceeding a reference load, which is not "when usage of the one of the one or more resources . . . exceeds the one of the limiting values." A "predicted load" is not usage.

In fact, the Examiner has not even clearly stated where Maruyama is considered to disclose the "limiting values," but it may be inferred in one instance that the Examiner perhaps considers the "reference load" to be the "limiting values." This is a result of the Examiner's citation to col. 1, lines 51-56 and col. 2, lines 10-28, that disclose controlling the processor load based on a predicted load exceeding the reference load data.

On the other hand, the Examiner also contends that Maruyama discloses, at col. 6, lines 36-41, "granting the one of the one or more resources to the operating system entity if the limiting value has not been exceeded." This cited portion of Maruyama reads:

> In the distribution destination checking process in FIG. 11, first, a check is performed to determine whether a distribution retry count exceeds a predetermined maximum value MAX (step S10). When the retry count does not exceed the maximum value MAX, a search is initiated for the load distribution destination (step S11).

In this instance, then, the Examiner seems to be contending that "maximum value MAX" is the "limiting value" and the "usage" is the "distribution retry count."

Needless to say, the "usage" cannot be both the "predicted load" (or the "processor load"?) and the distribution retry count. Furthermore, the "limiting value" cannot be both the "reference load data" and the "maximum value MAX." Thus, not only has the Examiner mischaracterized the disclosure of the Maruyama reference, but additionally, the Examiner's allegations with respect to what the Maruyama reference allegedly discloses are internally inconsistent.

It can thus be seen that the Examiner has made a number of mischaracterizations of the Maruyama reference. As a result, the Examiner's allegations with respect to the disclosure of

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Maruyama is insufficient to set forth a proper prima facie case that the combination of the Pereira and Maruyama references yield the subject matter recited in the rejected claims.

Motivation for Combination is not Sufficient for a Prima Facie Case of Obviousness

It is respectfully further submitted that the Examiner has not stated a proper motivation for combining the various cited references. The motivation stated by the Examiner for combining Pereira and Maruyama is that "Maruyama's method of assigning and comparing load values to resources would improve Pereira's system of distributing different resources by being able to tell with [sic] resource has exceeded its predetermined threshold value." These stated motivations spring from impermissible hindsight reasoning, and are not sufficient to support a prima facie case of obviousness.

It is well settled that, for a proper prima facie case of obviousness, the prior art itself must suggest the desirability of the claimed subject matter. The Examiner is referred, for example, to MPEP 2143.01. There, it is discussed that the source of the motivation must be the cited references themselves or knowledge held by one of ordinary skill in the art. Furthermore, the Examiner is reminded that "[t]he teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, not in applicant's disclosure." See MPEP 2143.

Here, the Examiner has pointed to nothing in the references or knowledge held by one of ordinary skill in the art that would suggest the alleged combinations of references. A bald, unsupported assertion that the teachings of a secondary reference "would improve" the teachings of a primary reference are insufficient. The Examiner has not pointed to anything in the references or knowledge held by one of ordinary skill in the art regarding the alleged improvement. Therefore, the Examiner must be relying on the impermissible hindsight gleaned from Applicant's disclosure, and the obviousness rejection is insufficient for this reason, too.

The Examiner has not provided a proper motivation to combine the references. Therefore, the rejection is unsupported by the cited references and should be withdrawn.

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CONCLUSION

For at least the reasons set forth above, Applicant thus respectfully requests that the rejections of the claims be withdrawn, and Applicant respectfully requests a Notice of Allowance for this application from the Examiner. Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at (650) 314-5324.

Respectfully submitted,

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